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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

CC Docket No. 96-128

COMMENTS OF
RCN TELECOM SERVICES, INC.

RCN Telecom Services, Inc. ("RCN"), through undersigned counsel and pursuant to the Public Notice released by the Federal Communications Commission ("Commission") on October 20, 1997, hereby submits its Comments in the above-captioned proceeding. Specifically, RCN objects to the granting of any waiver to those local exchange carriers ("LECs") and payphone service providers ("PSPs") who cannot currently provide payphone coding digits in their ANI information. For the reasons explained below, such a waiver fundamentally undermines the "give and take" market-based approach that the Commission considered essential in first implementing its payphone compensation mechanism in the previous orders in this docket.¹

I. GRANTING A WAIVER OF THE PAYPHONE CODING DIGIT REQUIREMENT WILL SEVERELY COMPROMISE THE ABILITY OF CARRIERS TO COMPLY WITH THE COMMISSION'S PAYPHONE COMPENSATION MECHANISM AND WILL VISCERATE THE COMMISSION'S "MARKET-BASED" APPROACH.

When the Commission made clear last year that facilities-based carriers would be required to track subscriber 800 and access code calls placed from payphones for compensation on a per-call

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (1996); Order on Reconsideration, 11 FCC Rcd 21233 (1996); Second Report and Order, FCC 97-371 (rel. Oct. 9, 1997) (collectively, the "Payphone Orders").

basis,² RCN acknowledged the Commission's ruling and began the process of developing the capability to track calls in accordance with the Commission's *Payphone Orders*. As the Commission recognized in the *Report and Order*, the development of per-call tracking capability "will require new investments for some carriers, particularly small carriers"³ The Commission also noted the claims of those parties who contended that tracking would be difficult without the provision of payphone coding digits by the LEC or PSP, and therefore determined "that each payphone should be required to generate . . . coding digits within the ANI for the carrier to track calls."⁴ Clearly, these two related requirements were intended by the Commission to emulate market conditions between the interexchange carriers ("IXCs") and the LECs and PSPs, by providing each side with certain responsibilities and bargaining chips.⁵

Now, however, the LEC ANI coalition, TDS Communications Corporation ("TDS"), and the United States Telephone Association ("USTA") propose that the Commission eliminate one of the fundamental premises underlying its "market-based" approach, by eliminating the IXCs' ability to effectively track, pay appropriately, and negotiate market-based rates for those calls they do carry from payphones. Unlike the Common Carrier Bureau ("Bureau"), the Commission must consider the practical effect of excusing the LECs and PSPs from providing the payphone coding digits while

² See *Report and Order*, 11 FCC Rcd at 20586, ¶ 86; *Order on Reconsideration*, 11 FCC Rcd at 21277, ¶ 92.

³ *Report and Order*, 11 FCC Rcd at 20591, ¶ 100.

⁴ *Id.*, at ¶ 98.

⁵ See, e.g., *Report and Order*, 11 FCC Rcd at 20566-67, ¶¶ 48-50 (stating that it is the Commission's policy to emulate the "marketplace" in providing for compensation of payphone calls).

maintaining the requirement that IXC's track calls from such payphones. In granting a waiver on its own motion of the payphone coding digit requirement for five months, the Bureau plainly commented, "The unavailability of these coding digits . . . will not preclude IXC's from identifying payphone calls for the purpose of determining the number of calls for which compensation is owed."⁶

The Bureau provided no support for this assertion, and RCN quite frankly remains puzzled as to how the Bureau made this unilateral determination. In fact, AT&T has already called to the Commission's attention that "it cannot comply with the waiver as granted," and accordingly, that "its ability to perform its obligations under the *Payphone Orders* is 'severely prejudiced by the Bureau's waiver order.'"⁷ RCN will encounter similar difficulties -- in terms of time, labor, and expense -- in attempting to track calls from those payphones that fail to identify themselves as such. RCN therefore agrees fully with AT&T that those IXC's who developed per-call tracking capabilities in reliance on the Commission's rules should not now be made to bear the additional significant costs associated with the Commission's decision to allow the LECs and PSPs to take an even longer time to meet their own long-standing, clearly-defined obligations. Such a decision is wholly inconsistent with the Commission's decision in the *Payphone Orders* to adopt a competitively balanced "market-based" approach to payphone compensation.

⁶ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order, DA 97-2162 (Com. Car. Bur. Oct. 7, 1997) ("*Waiver Order*"), at ¶ 12.

⁷ Public Notice, CC Docket No. 96-128, DA 97-2214 (rel. Oct. 20, 1997) (*quoting* Letter to John B. Muleta, Deputy Chief, Common Carrier Bureau from E.E. Estey, Government Affairs Vice President, AT&T, Oct. 14, 1997).

Waiving the payphone coding digit requirement for LECs and PSPs fatally undermines the Commission's "market-based" approach in another respect as well. In defending its default compensation system upon reconsideration and in the U.S. Court of Appeals for the D.C. Circuit, the Commission argued that its market-based approach was fair and reasonable because IXC's will have the ability to block calls "from overpriced payphones and, therefore, will be able to negotiate lower rates if the local coin rates are too high."⁸ By allowing forty percent of the nation's payphones to receive compensation without providing the coding digits in their ANI, however, the Bureau has eliminated altogether the possibility that IXC's will be able to recognize and block overpriced calls from these payphones in "real time." Quite simply, how does the Commission expect its market-based approach to work when the Commission proposes -- and the Bureau has already chosen -- to take away the one bargaining chip that even this Commission has admitted IXC's need in this proposed "market?" Indeed, in allowing a waiver of the coding digit requirement for even five months, the Commission has already undermined its own hopes for the implementation of a proper market-based approach to payphone compensation. Given the effect a waiver will have on the ability of IXC's to participate effectively in the Commission's payphone compensation market, by no means should the Commission grant the petitioners' request.

Under a market-based, "give and take" approach, the beneficiary of the Commission's designed per-call compensation mechanism should at least provide some means by which that compensation can be provided. This principle is consistent with the Commission's own findings with respect to a "carrier-pays" arrangement in the first place. Specifically, the Commission

⁸ *Illinois Pub. Telecomm. Ass'n v. FCC*, 117 F.3d 555, 564 (D.C. Cir. 1997). See also *Order on Reconsideration*, 11 FCC Rcd at 21268-69, ¶ 71.

concluded “that the ‘carrier-pays’ system for per-call compensation places the payment obligation on the primary economic beneficiary in the least burdensome, most cost effective manner.”⁹ If the Commission intends to apply this market-based principle consistently and equitably throughout its payphone compensation mechanism, it should continue to mandate that the primary economic beneficiary of its per-call compensation mechanism -- the LEC or PSP -- provide the required information in order to obtain compensation.

II. GRANTING A WAIVER OF THE PAYPHONE CODING DIGIT REQUIREMENT IS ENTIRELY UNFAIR AND INEQUITABLE.

This Commission should not countenance the obvious and complete disregard for its Rules evidenced by these waiver petitions. The LECs and PSPs had notice of the payphone coding digit requirement dating back to September of 1996. Yet only *one week* before the per-call compensation mechanism was to initiate -- more than a year after the mechanism had been announced -- the LEC ANI coalition, TDS, and USTA filed petitions with the Commission requesting a waiver of the payphone coding digit requirement. In granting a waiver of five months on its own motion, the Bureau commented that “[r]efusal to waive this requirement would lead to the inequitable result that many payphone providers . . . would be denied any compensation while implementation issues are being resolved by the industry.”¹⁰ Of course, the Bureau failed to note that Section 276 of the Telecommunications Act of 1996 establishes no date by which per-call compensation should be in place.¹¹

⁹ *Report and Order*, 11 FCC Rcd at 20584, ¶ 83.

¹⁰ *Waiver Order*, at ¶ 11.

¹¹ 47 U.S.C. § 276 (1996).

The Commission required that all IXC's develop tracking capability within one year, and the IXC's have made the effort to do so. Nothing prevents the Commission from similarly adhering to its requirement that all LEC's and PSP's provide payphone coding digits by the same time. No court would permit such utter disregard for its clearly-announced, year-old directives, and neither should this Commission.¹² It is no way inequitable to demand that the LEC's and PSP's comply with a reasonable mandate that they have known about for more than a year's time.

Indeed, RCN submits that it is entirely unfair and inequitable to those IXC's who made the effort to comply with the terms of the Commission's *Payphone Orders* to excuse the LEC's and PSP's from their corresponding requirement to provide the payphone coding digits.¹³ The Commission should not allow the LEC ANI Coalition, TDS, and USTA to succeed by filing eleventh hour petitions that seek anywhere from nine more months to an indefinite period of time to comply with the Commission's requirements. If the Commission is interested in establishing a fair and competitively balanced market-based, "give and take" relationship between LEC's, PSP's, and the IXC's who carry subscriber 800 and access code calls from their payphones, it should first ensure that

¹² More than a year after this coding requirement was announced, USTA has only now determined that its previously reported costs of upgrading switches for Flex ANI deployment included "disconnected switches for replacement," "remotes, wireless switches, STPs, other special purpose switches, and switches located outside the United States." Letter to John B. Muleta, Deputy Chief, Common Carrier Bureau, from Keith Townsend, Director Regulatory Affairs and Counsel, USTA, Oct. 24, 1997.

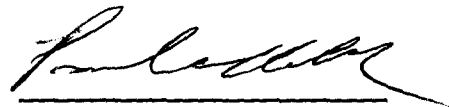
¹³ Indeed, the Bureau's decision to grant a limited waiver of the payphone coding digit requirement on its own motion strikes RCN as particularly inequitable and procedurally suspect, given that the Commission sought no comment from those carriers who have made every effort to comply with the Commission's *Payphone Orders*. In granting the waiver *sua sponte*, the Bureau gave carriers no chance to comment on the inequitable nature of the waiver, nor the real practical difficulties associated with tracking payphone calls without payphone coding digits.

all parties meet their respective obligations under the *Payphone Orders*.

III. CONCLUSION

For the reasons provided above, RCN respectfully submits that the Commission should not grant a waiver of the payphone coding digit requirement. Carriers should not be made to incur additional costs to pay for calls from payphones that do not satisfy the Commission's clearly defined, year-old coding requirements.

Respectfully submitted,



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Dated: October 30, 1997

CERTIFICATE OF SERVICE

I, Jolanda Tedford, hereby certify that a copy of the foregoing **Comments of RCN Telecom Services, Inc., CC Docket No. 96-128** was sent to each of the following parties by hand delivery (denoted with asterisk) and regular mail on this 30th, day of October, 1997.

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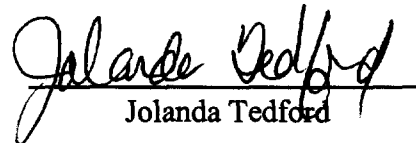
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